

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STEVEN M. FRITZ,

Plaintiff,

v.

JB HUNT TRANSPORT, INC.,

Defendant.

CASE NO. C12-5635

ORDER TO SHOW CAUSE RE
JURISDICTION

This matter comes before the Court *sua sponte* on the Court's review of Defendant's removal documentation. The Court has considered the Notice of Removal, the Complaint and Amended Complaint, and the record herein.

INTRODUCTION AND BACKGROUND

On July 18, 2012, Defendant JB Hunt Transport Inc. filed a Notice of Removal of the above captioned wrongful discharge action. Dkts. 1 & 2. The Notice of Removal asserts as the basis for jurisdiction both federal question jurisdiction, 28 U.S.C. §1331, and diversity of citizenship, 28 U.S.C. §1332. Dkt. 1 p. 2.

1 The federal questions in the Complaint and Amended Complaint are claims asserted
 2 under (1) the Federal Motor Carrier Act, 49 U.S.C. Subtitle VI, Part B, and (2) 49 C.F.R. § 395
 3 et seq. Dkt. 2 p. 13; Dkt. 10 p. 9.

4 It is unquestioned that there is complete diversity of citizenship as Plaintiff is a resident
 5 and citizen of Washington, whereas Defendant is incorporated under the laws of Georgia with its
 6 principal place of business in Arkansas. *Id.* The Complaint does not specify an amount of
 7 monetary damages, and Defendant simply avers that “there there is a good faith belief based on
 8 the allegations in the Complaint that the amount in controversy exceeds \$75,000.00, exclusive of
 9 interest and costs.” *Id.*

10 **STANDARDS GOVERNING REMOVAL**

11 A district court has an independent duty to examine its own jurisdiction and to remand a
 12 removed action if there is no federal jurisdiction. Removal is permissible only where original
 13 jurisdiction exists at the time of removal or at the time of the entry of final judgment. *Sparta*
 14 *Surgical Corp. v. National Ass’n. of Securities Dealers, Inc.*, 159 F.3d 1209, 1211 (9th Cir.
 15 1998); *Harris v. Provident Life and Acc. Ins. Co.*, 26 F.3d 930, 932 (9th Cir. 1994). In the
 16 absence of subject-matter jurisdiction, the court is empowered to, sua sponte, order summary
 17 remand of the action. 28 U.S.C. § 1446(c)(4). The Ninth Circuit has held that “[i]f a district
 18 court lacks subject matter jurisdiction over a removed action, it has the duty to remand it.”
 19 *Sparta Surgical Corp.* at 1211.

20 The removal statute, 28 U.S.C. § 1441, provides that “any civil action brought in a State
 21 court of which the district courts of the United States have original jurisdiction, may be removed
 22 by the defendant or defendants, to the district court of the United States for any district ... where
 23 such action is pending.” 28 U.S.C. § 1441(a).

1 A federal court must order remand if there is any defect which causes federal jurisdiction
2 to fail. 28 U.S.C. § 1447(c). The removal statutes are construed restrictively, and any doubts
3 about removability are resolved in favor of remanding the case to state court. *Gaus v. Miles,*
4 *Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

5 The removing defendant bears the burden of establishing federal jurisdiction, including
6 any applicable amount in controversy requirement. *Abrego Abrego v. The Dow Chemical Co.*,
7 443 F.3d 676, 682-83 (9th Cir. 2006). The presumption against removal jurisdiction applies with
8 particular force to defendant's arguments that the complaint frames an amount in controversy that
9 exceeds the jurisdictional minimum. *Gaus*, at 566; *Rodgers v. Central Locating Service, Ltd.*,
10 412 F. Supp.2d 1171, 1175 (W.D. Wash. 2006). Where the complaint does not specify the
11 amount of damages sought, the removing defendant must prove by a preponderance of the
12 evidence that the amount in controversy meets the jurisdictional requirement. *Abrego Abrego*,
13 at 683; *Gaus*, at 566-67; *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

14 Conclusory allegations by the defendant will not suffice to overcome the traditional
15 presumption against removal jurisdiction. *Rodgers*, at 1178; *Singer v. State Farm Mut. Auto. Ins.*
16 *Co.*, 116 F.3d 373, 375 (9th Cir. 1997). Instead, the courts may look beyond pleadings and
17 consider other summary judgment type evidence relevant to the amount in controversy, tested as
18 of the time of removal. *Kroske v. U.S. BankCorp.*, 432 F.3d 976, 980 (9th Cir. 2005); *Valdez v.*
19 *Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004).

20 **Diversity Jurisdiction**

21 The district courts of the United States have “original jurisdiction” is where there is
22 complete diversity between the parties and the amount in controversy exceeds \$75,000. 28
23 U.S.C. § 1332(a)(1).
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1 It is not facially evident from the face of Plaintiffs' complaint that the matter in
2 controversy exceeds \$75,000. Plaintiff alleges that he has suffered lost wages, past and future,
3 lost future employment opportunities, anxiety and emotional distress. Plaintiff's prayer for relief
4 seeks general and punitive damages, back and front pay, and reasonable attorney's fees and
5 costs. Dkt. 2 p. 14; Dkt. 10 p. 10.

6 Defendant has not set forth any facts in the removal petition, nor submitted any summary-
7 judgment-type evidence. Its reliance on "a good faith belief" makes it clear that Defendant
8 believes it is "facially evident" that this controversy involves more than \$75,000. However,
9 Plaintiffs' Complaint provides no reasoned basis for determining the amount in controversy.
10 Nowhere in the Complaint does it relate the necessary facts or circumstances that would permit
11 the Court to reasonably infer the probable extent of Plaintiff's damages. To rely on what
12 effectively is mere speculation and conjecture is contrary to the Ninth Circuit's requirement that
13 the jurisdictional determination be grounded on a factual basis that is similar in quality to
14 "summary-judgment-type evidence." *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d
15 1089, 1090 (9th Cir. 2003)

16 It is unclear at this stage of the proceedings that the jurisdictional requirements have been
17 satisfied for federal jurisdiction premised on diversity of citizenship.

18 **Federal Question Jurisdiction**

19 Under 28 U.S.C. § 1331, federal district courts have "original jurisdiction of all civil
20 actions arising under the Constitution, laws, or treaties of the United States." The vast majority
21 of cases that come within this grant of jurisdiction are those in which federal law creates the
22 cause of action. *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 808 (1986).

1 Plaintiff asserts a federal cause of action pursuant to the Federal Motor Carrier Act, 49
2 U.S.C. Subtitle VI, Part B, and (2) 49 C.F.R. § 395 et seq. However, it is not apparent that
3 Plaintiff may maintain a cause of action pursuant to this statute. The Federal Omnibus
4 Transportation Employee Testing Act (FOTETA), 49 U.S.C. § 31306, does not provide a federal
5 remedy for a private cause of action. See *Sheehan v. Broadband Access Services, Inc.* 889
6 F.Supp.2d 284 (D. R.I. 2012). *Byrne v. Massachusetts Bay Transp. Authority*, 196 F.Supp.2d 77,
7 87 (D. Mass. 2002); *Parry v. Mohawk Motors of Michigan, Inc.*, 236 F.3d 299, 307–08 (6th Cir.
8 2000); *Burton v. Southwood Door Co., MEA, Inc.*, 305 F.Supp.2d 629, 634 (S.D. Miss. 2003).

9 The whistle-blowers protections found in the Safety Transportation Assistance Act
10 (STAA), 49 U.S.C. § 31105, also do not provide a direct cause of action in the district court. A
11 discharged employee who meets the whistleblower criteria set forth in the statute is entitled to
12 file a complaint with the Secretary of Labor. 49 U.S.C. § 31105(a) & (b). The district courts
13 only have jurisdiction to enforce an order issued by the Secretary of Labor, 49 U.S.C. §
14 31105(e), or in instances where the where the Secretary fails to act on a complaint, 49 U.S.C. §
15 31105(c). See *Calhoun v. U.S. Dept. of Labor*, 576 F.3d 201, 208 (4th Cir. 2009); *Yellow*
16 *Freight Sys., Inc. v. Reich*, 8 F.3d 980, 984 (4th Cir. 1993).

17 There is nothing in Plaintiff’s Complaint or the Notice of Removal that indicates that the
18 district court has federal question jurisdiction under “49 U.S.C. Subtitle VI, Part B.”

19 CONCLUSION

20 The Notice of Removal does not reflect that this Court has jurisdiction. There is a lack of
21 a factual basis for the establishment of the requisite jurisdictional amount of damages in a
22 diversity action. In regard to federal question jurisdiction, there may be no cause of action under
23 the cited federal statute and regulation. Rather than summarily remand this matter to the state
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1 court, the parties should have the opportunity to show cause why this matter should not be
2 remanded to state court for lack of federal jurisdiction.

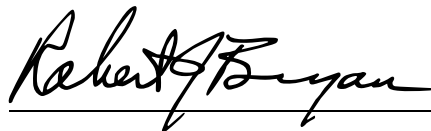
3 Therefore it is hereby **ORDERED**:

4 Defendant **SHOW CAUSE**, if any it has, in writing, no later than May 24, 2013, why
5 this matter should not be remanded to state court for lack of jurisdiction.

6 Plaintiff may file a response, no later than May 31, 2013, and the Defendant a reply, no
7 later than June 7, 2013. The matter will be docketed for consideration on June 7, 2013.

8 Defendant's motion for summary judgment (Dkt. 24) is stricken from the docket and will
9 be renoted, if necessary, after a determination of jurisdiction.

10 Dated this 14th day of May, 2013.

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13 ROBERT J. BRYAN
14 United States District Judge
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